



TC06841

**Appeal numbers: TC/2013/03448
TC/2013 03449**

Income tax - Schedule 55 Finance Act 2009 - fixed and daily penalties for partnership's failure to file self-assessment return on time - whether reasonable excuse – no - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**MOHSEN MAQBOOL and
FIAZ MAQBOOL**

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE MICHAEL CONNELL
 MEMBER DEREK ROBERTSON**

**Sitting in public at Tax Appeals Tribunal, Magistrates Court, Newcastle under
Lyme on 29 May 2018**

The Appellants did not attend and were not represented

Mr Ian Jones, Officer of HMRC, for the Respondents

DECISION

1. This is an appeal by Fiaz Maqbool and Mohsen Maqbool trading in partnership together as Adam's Crazy Prices ('the Appellant/the Appellant partnership') against penalties totalling £1,600 imposed by the Respondents ('HMRC') under Paragraphs 3, 4, 5 and 6 of Schedule 55 Finance Act 2009, for its failure to file a partnership self-assessment tax return on time, for the tax year ending 5 April 2011.

2. Neither partner attended the hearing and the partnership was not represented. The Tribunal was satisfied that the Appellant partnership had been given notice of the time, date and venue of the appeal hearing and that it was in the interests of justice to proceed.

Background

3. The Appellant partnership traded from 2007 until its dissolution in April 2012.

4. If a business is run as a partnership, as well as the partners filing individual self-assessment tax returns, a partnership return must also be filed by the representative partner. During the tax year 2010-11 the partners were Mr Fiaz Maqbool and Mr Mohsen Maqbool. Mr Fiaz Maqbool was the representative partner.

5. The partner's individual and the Appellant partnership's 2010-11 self-assessment partnership ('SA') returns were issued on 6 April 2011. If filed in paper form, the returns were due by 31 October 2010. If filed electronically, the returns were due no later than 31 January 2012.

6. The partnership return was not filed until 11 February 2013.

7. All partners become liable to a late filing penalty where the representative partner is late in filing the partnership tax return.

8. A late filing penalty is chargeable where a taxpayer is late in filing their tax return. The 'penalty date' is defined at Paragraph 1(4) Schedule 55 FA 2009 and is the date after the filing date.

9. The penalties for late filing of a return can be summarised as follows:

i. A penalty of £100 is imposed under Paragraph 3 of Schedule 55 Finance Act ('FA') 2009 for the late filing of the Individual Tax Return.

ii. If after a period of 3 months beginning with the penalty date the return remains outstanding, daily penalties of £10 per day up to a total of £900 are imposed under Paragraph 4 of Schedule 55 FA 2009.

- iii. If after a period of 6 months beginning with the penalty date the return remains outstanding, a penalty of £300 is imposed under Paragraph 5 of Schedule 55 FA 2009.
- iv. If after a period of 12 months beginning with the penalty date the return remains outstanding, a penalty £300 is imposed under Paragraph 6 of Schedule 55 FA 2009.
10. In summary, penalties of £100, £900, £300 and £300 were imposed, under (i), (ii), (iii) and (iv) above, for the year 2010-11.
11. The Appellant was issued with a £100 late filing notice on 14 February 2012. This would have also advised the Appellant partnership that if the delay continued, and its return was more than three months late HMRC would begin charging a penalty of £10 for each day it remained outstanding for a maximum of 90 days.
12. As the Appellant's 2010-11 return had not been filed after a period of 3 months beginning with the penalty date, daily penalties of £10 per day up were imposed and on 7 August 2014, a notice of penalties totalling £900 was issued to the Appellant. A 6 months late filing penalty of £300 was also imposed on the same date.
13. On 4 September 2012 the partnership's agent, Beaumonts, Chartered Accountants, appealed against the partnership's six month and daily late filing penalties, on the grounds that:
- Neither the representative partner nor Beaumonts were aware that a partnership return required completion.
 - The representative partner's earnings from the partnership were included in his self-employment 2010-11 tax return.
14. On 8 February 2013 Mr Fiaz Maqbool's agent requested a review of HMRC's decision, saying that:
- The share of the partnership profits was included in the individual partner's returns as self-employed income.
 - HMRC had imposed penalties for the failure to forward 'a bundle of papers which had absolutely no consequence'.
15. HMRC carried out a review and issued their review conclusion on 19 March 2013. The outcome of the review was that HMRC's decision should be upheld.
16. On 15 May 2013, Beaumonts notified the partnership's appeal to the Tribunal, giving their grounds as:
- Mr Fiaz Maqbool is the representative partner of the Appellant partnership, a grocery store he operated with his brother Mr M Maqbool until 13 April 2011. Their share of profit was declared on their individual returns.

- After the business closed in April 2011 Mr F Maqbool spent many months in Pakistan including from November 2011 to April 2012.
- Mr Fiaz Maqbool has already been charged £1,200 penalties for late submission of his 2010-11 individual return so additional penalties for late submission of the partnership return merely duplicates the penalties.

17. Daily penalties had been the subject of appeal in the case of *Donaldson v Commissioners for Her Majesty's Revenue and Customs* [2016] EWCA Civ. 761 (the “Donaldson case”). Mr Donaldson challenged aspects of HMRC’s standard approach to these penalties and at the date of the Appellant’s Notice of Appeal, *Donaldson* was due to be heard by the Court of Appeal.

18. Because the outcome of the *Donaldson* appeal was relevant to the Appellant’s appeal against daily penalties, the First-tier Tribunal directed that the appeal should be stood over until the *Donaldson* appeal was determined. The partners were informed on 11 September 2013.

19. The Court of Appeal decision in *Donaldson* was that HMRC had satisfied the requirements of paragraph 4(1)(b) and 4(1)(c) of Schedule 55 and despite the omission, in the notice of assessment, of the correct period for which daily penalties had been assessed, the omission did not affect the validity of the notice.

20. The Appellant was advised that the Court of Appeal’s decision in the *Donaldson* case had been released and that accordingly the Appellant’s case was soon to be listed.

21. On 7 April 2017 Beaumonts on behalf of the partnership wrote to the Tribunal to say that:

“The late filing of the Partnership 2010-11 return was due to Mr Fiaz Maqbool being absent in Pakistan for an extended period in the year 2011/12. If absence from the UK by the Representative Partner after the cessation of a business is not deemed sufficient cause for the special Reduction to be applied, then it must be deemed reasonable by HMRC that Taxpayers must incur the expense of returning to the UK to submit their Tax Returns within statutory filing dates, a disproportionality aspect if ever there was one, particularly if the Taxpayer has not realised a Tax Return is due to be filed by a statutory deadline.”

22. A notice of hearing on 29 May 2018 at Stoke magistrates Court, Bethesda Street, Stoke, was issued to the two partners on 17 March 2018.

Relevant statutory provisions

Taxes Management Act 1970

23. Section 8 - Personal return- provides as follows:

(1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, [and the amount payable by

him by way of income tax for that year,] he may be required by a notice given to him by an officer of the Board-

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- a) to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may, reasonably be required in pursuance of the notice, and
 - b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.

(1A) The day referred to in subsection (1) above is-

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- (a) the 31st January next following the year of assessment, or
 - (b) where the notice under the section is given after the 31st October next following the year, the last [day of the period of three months beginning with the day on which the notice is given]

(1AA) For the purposes of subsection (1) above-

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- (a) the amounts in which a person is chargeable to income tax and capital gains tax are net amounts, that is to say, amounts which take into account any relief or allowance a claim for which is included in the return; and
 - (b) the amount payable by a person by way of income tax is the difference between the amount in which he is chargeable to income tax and the aggregate amount of any income tax deducted at source and any tax credits to which [section 397(1) [or [397A(1)] of ITTOIA 2005] applies.]
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(1B) In the case of a person who carries on a trade, profession, or business in partnership with one or more other persons, a return under the section shall include each amount which, in any relevant statement, is stated to be equal to his share of any income, [loss, tax, credit] or charge for the period in respect of which the statement is made.

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(1C) In subsection (1B) above "relevant statement" means a statement which, as respects the partnership, falls to be made under section 12AB of the Act for a period which includes, or includes any part of, the year of assessment or its basis period.

(1D) A return under the section for a year of assessment (Year 1) must be delivered-

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- (a) in the case of a non-electronic return, on or before 31st October in Year 2, and
 - (b) in the case of an electronic return, on or before 31st January in Year 2.

(1E) But subsection (1D) is subject to the following two exceptions.

35 (1F) Exception 1 is that if a notice in respect of Year 1 is given after 31st July in Year 2 (but on or before 31st October), a return must be delivered-

- (a) during the period of 3 months beginning with the date of the notice (for a non-electronic return), or

(b) on or before 31st January (for an electronic return).

(1G) Exception 2 is that if a notice in respect of Year 1 is given after 31st October in Year 2, a return (whether electronic or not) must be delivered during the period of 3 months beginning with the date of the notice.

5 (1H) The Commissioners-

(a) shall prescribe what constitutes an electronic return, and

(b) may make different provision for different cases or circumstances.

10 (2) Every return under the section shall include a declaration by the person making the return to the effect that the return is to the best of his knowledge correct and complete.

(3) A notice under the section may require different information, accounts and statements for different periods or in relation to different descriptions of source of income.

15 (4) Notices under the section may require different information, accounts and statements in relation to different descriptions of person.

(4A) Subsection (4B) applies if a notice under the section is given to a person within section 8ZA of the Act (certain persons employed etc. by person not resident in United Kingdom who perform their duties for UK clients).

20 (4B) The notice may require a return of the person's income to include particulars of any general earnings (see section 7(3) of ITEPA 2003) paid to the person.

(5) In the section and sections 8A, 9 and 12AA of the Act, any reference to income tax deducted at source is a reference to income tax deducted or treated as deducted from any income or treated as paid on any income.

Schedule 55 Finance Act 2009:

25 24. The penalties at issue in the appeal are imposed by Schedule 55 FA 2009.

25. Paragraph 1 (4) states that the 'penalty date' is the date after the 'filing date'.

26. Paragraph 3 of Schedule 55 imposes a fixed £100 penalty if a self-assessment return is submitted late.

30 27. Paragraph 4 of Schedule 55 provides for daily penalties to accrue where a return is more than three months late as follows:

(1) P is liable to a penalty under the paragraph if (and only if)-

35 (a) P's failure continues after the end of the period of 3 months beginning with the penalty date,

(b) HMRC decide that such a penalty should be payable, and

(c) HMRC give notice to P specifying the date from which the penalty is payable.

5 (2) The penalty under the paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c).

(3) The date specified in the notice under sub-paragraph (1)(c)-
10 (a) may be earlier than the date on which the notice is given, but
(b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).

28. Paragraph 5 of Schedule 55 provides for further penalties to accrue when a return is more than 6 months late as follows:

15 (1) P is liable to a penalty under the paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under the paragraph is the greater of-
20 (a) 5% of any liability to tax which would have been shown in the return in question, and
(b) £300.

29. Paragraph 23 of Schedule 55 contains a defence of "reasonable excuse" as follows:

25 (1) Liability to a penalty under any paragraph of the Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of sub-paragraph (1)-
30 (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,
(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
35 (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

30. Paragraph 16 of Schedule 55 gives HMRC power to reduce penalties owing to the presence of "special circumstances" as follows:

40 (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of the Schedule.

(2) In sub-paragraph (1) "special circumstances" does not include-
45 (a) ability to pay, or
(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to-
(a) staying a penalty, and

- (b) agreeing a compromise in relation to proceedings for a penalty.

31. Paragraph 20 of Schedule 55 gives a taxpayer a right of appeal to the Tribunal and paragraph 22 of Schedule 55 sets out the scope of the Tribunal's jurisdiction on such an appeal. In particular, the Tribunal has only a limited jurisdiction on the question of "special circumstances" as set out below:

- (1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.
- (2) On an appeal under paragraph 20(2) that is notified to the tribunal, the tribunal may-
 - (a) affirm HMRC's decision, or
 - (b) substitute for HMRC's decision another decision that HMRC had power to make.
- (3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 16-
 - (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or
 - (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 16 was flawed.
- (4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

The Appellant's case

32. The Appellant's grounds of appeal are as set out in the Appellant partnership's notice of appeal.

HMRC's Case

33. HMRC accepts that the onus rests with it to demonstrate that the 2010-11 partnership tax return was issued to the Appellant partnership and that the representative partner failed to submit the return on time.

34. HMRC's records show that a partnership tax return for the year 2010-11 was issued to the Appellant partnership on 6 April 2011 and as such the partners were legally bound to complete and file the return by the legislative deadline of 31 January 2012, if filed electronically.

35. In accordance with Paragraph 25(4) Schedule 55 FA 2009, an appeal under paragraph 20 in connection with a penalty payable by virtue of this paragraph may be brought only by the representative partner or a successor of the representative partner.

36. Mr Fiaz Maqbool is the representative partner. Therefore in accordance with Paragraph 25(5) Schedule 55 FA 2009, HMRC have treated this as an appeal against the determination of the penalties on all of the partners in respect of the failure.

37. This appeal is not concerned with specialist or obscure areas of tax law. It is concerned with the ordinary every day responsibilities of Mr Fiaz Maqbool to ensure his 2010-11 partnership tax return for the partnership was filed by the legislative date.

38. The partnership ran from 1 October 2007 to 13 April 2011. As Mr Fiaz Maqbool had been completing partnership returns since 2007-08 for the partnership, HMRC contend he was fully aware that a partnership return was required along with his individual return as he has been completing both for several years.

5 39. The inclusion of the share of partners' profits on partnership pages submitted with the partners' individual tax returns does not remove the representative partner's legal obligation to submit a partnership return.

40. As Mr Maqbool has been completing partnership returns since 2007-08 he was aware of the requirement to file a return and the deadline for doing so. Being outside
10 the UK for several months does not remove that obligation.

41. Any late filing penalties charged for the late filing of an individual return and a partnership return are separate as these are two separate obligations and submissions. Mr Fiaz Maqbool filed his individual 2010-11 return online on 21 June 2012 and incurred £620 late filing penalties and not £1,200 as claimed by his agent.

15 42. Paragraph 23 of Schedule 55 FA 2009, provides that a penalty does not arise in relation to a failure to make a return if the person satisfies HMRC (or on appeal, a Tribunal) that they had a reasonable excuse for the failure and they put right the failure without unreasonable delay after the excuse ceased.

43. The evidential burden is therefore on the Appellant to show that it has a
20 reasonable excuse for the failure to file on time and that any reasonable excuse lasted for the entire period of the failure.

44. There is no statutory definition of "reasonable excuse". Whether or not a person had a reasonable excuse is an objective test and "is a matter to be considered in the light of all the circumstances of the particular case" (*Rowland v HMRC* (2006) STC
25 (SCD) 536 at paragraph 18).

45. The law specifies two situations that are not reasonable excuse:

(a) An insufficiency of funds, unless attributable to events outside the Appellant's control, and

(b) Reliance on another person to do anything, unless the person took
30 reasonable care to avoid the failure.

46. The actions of the taxpayer should be considered from the perspective of a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts. The decision depends upon the particular circumstances in which the failure occurred and the particular
35 circumstances and abilities of the person who failed to file their return on time. The test is to determine what a reasonable taxpayer, in the position of the taxpayer, would have done in those circumstances and by reference to that test, to determine whether the conduct of the taxpayer can be regarded as conforming to that standard.

47. Reasonable excuse was considered in the case *The Clean Car Company Ltd v The Commissioners of Customs & Excise* by the Tribunal Chairman Judge Medd:

5 “It has been said before in cases arising from default surcharges that the test of whether or not there is a reasonable excuse is an objective one. In my judgment it is an objective test in this sense. One must ask oneself: was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?” [Page 128 3rd line et seq.].

10 48. HMRC contend that the Appellant has not provided a reasonable excuse for its failure to file the partnership tax return for the year 2010-11 on time. Mr Fiaz Maqbool did not take sufficient care in relation to his statutory obligations. The penalties have been correctly charged in accordance with the legislation.

Special Reduction

15 49. Paragraph 16(1) of Schedule 55 allows HMRC to reduce a penalty if they think it is right because of special circumstances. “Special circumstances” is undefined save that, under paragraph 16(2), it does not include ability to pay, or the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another.

20 50. The courts accept that for circumstances to be special they must be ‘exceptional, abnormal or unusual’ (*Crabtree v Hinchcliffe*) or ‘something out of the ordinary run of events’ (*Clarks of Hove Ltd v Bakers’ Union*).

25 51. In other contexts “special” has been held to mean ‘exceptional, abnormal or unusual’ (*Crabtree v Hinchcliffe* [1971] 3 All ER 967), or ‘something out of the ordinary run of events’ (*Clarks of Hove Ltd v Bakers’ Union* [1979] 1 All ER 152). The special circumstances must also apply to the particular individual and not be general circumstances that apply to many taxpayers by virtue of the penalty legislation (*David Collis* [2011] UKFTT 588 (TC), paragraph 40).

30 52. Where a person appeals against the amount of a penalty, paragraph 22(2) and (3) of Schedule 55, FA 2009 provide the Tribunal with the power to substitute HMRC’s decision with another decision that HMRC had the power to make. The Tribunal may rely on paragraph 16 (Special Reduction) but only if they think HMRC’s decision was ‘flawed when considered in the light of the principles applicable in proceedings for judicial review’.

35 53. HMRC have considered the Appellant’s grounds of appeal but these do not amount to special circumstances which would merit a reduction of the penalties.

54. Accordingly, HMRC’s decision not to reduce the penalties under paragraph 16 was not flawed and there are no special circumstances which would require the Tribunal to reduce the penalties.

Conclusion

55. When a person appeals against a penalty they are required to have a reasonable excuse which existed for the whole period of the default. Whether there was a reasonable excuse, which lasted for the entire period of default, is a matter to be
5 considered in the light of all the circumstances of the particular case. In this matter the partnership tax return was filed eight months late.

56. Mr Fiaz Maqbool was the representative partner for the purposes of filing the partnership's tax returns.

57. As HMRC say, the inclusion of the share of partners' profits on partnership
10 pages submitted with the partners' individual tax returns does not remove the representative partner's obligation to submit a partnership return. All matters relating to the calculation of profits, and to the allocation of profits between partners, is dealt with through the partnership return. HMRC records show that Mr Fiaz Maqbool has been submitting partnership returns from 2007-08, so is aware of his responsibility in
15 this regard.

58. A 2010-11 partnership return was issued on 6 April 2011. With the return a separate information leaflet was sent advising Mr Fiaz Maqbool of the penalties which would apply for late filing from 2010-11. As he did not submit a paper return by 31 October 2011 an online return reminder will have sent well before 31 January
20 2012.

59. As Mr Fiaz Maqbool did not submit an online partnership return by 31 January 2012, a late filing penalty notification was sent to him on 14 February 2012. This notification would have reminded him that if the return was more than three months late, daily penalties of £10 each day would be charged and that these would begin on
25 1 February 2012 for paper returns and on 1 May 2012 for online returns. An individual statement of account showing the late filing penalty was sent to him on 4 March 2012. Following receipt of these reminders, an online return filed by 30 April 2012 would have avoided any further filing penalties.

60. A daily penalties reminder letter was also automatically issued on 5 June 2012.
30 This reminder warned that a further penalty would apply if the return was more than 6 months late. A further daily penalties reminder letter was automatically issued on 3 July 2012. Again this reminder warned of the 6 month late filing penalty.

61. Mr Fiaz Maqbool would have received notification to file a return in ample time for the return to be filed by the due date and would have been sent multiple reminders.
35 HMRC say that they are unable to agree the partners were not aware of their obligation to submit the 2010-11 partnership return or of the filing penalties that were accruing.

62. As Mr Fiaz Maqbool, the representative partner, has not provided a reasonable excuse for failing to submit the partnership return on time, the penalties for late filing
40 of the return have been correctly charged.

63. We find on the facts, that the Appellant partnership has not shown a reasonable excuse for the late filing of the partnership's 2010-11 return. There are no special circumstances which would allow the penalties to be reduced under Special Reduction provisions.

5 64. The appeal is therefore dismissed and the late filing penalties of £1,600 are confirmed.

65. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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**MICHAEL CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 26 NOVEMBER 2018

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